

UNITED STATES GENERAL ACCOUNTING OFFICE

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WASHINGTON 25, D. C.

OFFICE OF GENERAL COUNSEL

B-125045-O.M.

September 21, 1959

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Director, Civil Accounting and Auditing Division

Your memorandum of June 25, 1959, requests that we recheck the views expressed in our memorandum of April 28, 1959, B-125045-O.M., to you, regarding the payment of just compensation by the Bureau of Reclamation for relocation of facilities of public utilities companies.

The memorandum of April 28, 1959, considered the case of State of Tennessee v. United States, 256 F. 2d 244, wherein the court said at page 265 that "the correct measure of damages would be the cost of removal and permanent relocation of the line less the depreciation that existed in the old line." In construing the court's holding we stated as follows:

"The court's determination of damages was measured on the basis of the cost of removal and relocation of the telephone line less the percentage of depreciation that existed in the old line. That is to say, if the old line was 2/5 depreciated the cost to the Government for removal and relocation of a new line of equal utility would be 3/5 of the cost of the new line. This illustration demonstrates that the depreciation credit due the Government on account of payment of just compensation for utility relocations is the percentage of depreciation taken on the old asset and applied to the current replacement cost of such asset. Our interpretation and application of the court's holding was confirmed in a discussion with the Government attorneys on the brief of the case.

"Accordingly, you are advised that the position taken by your Division in the report relative to the determination of just compensation for utility relocations appears to be in accord with the holding in the cited case and is, in our opinion, legally proper."

It appears that the Bureau of Reclamation disagrees with our interpretation of the court's holding, it being their contention that the amount of just compensation provided for therein is for determination on the basis of reproduction cost less depreciation accrued on the old facility. In addition, the Bureau contends that a depreciation allowance incident to utility relocations should not be given mandatory effect in all cases as the Bureau "must retain the flexibility required in negotiations the end

objective of which is to arrive at agreements which, over-all, are considered to be in the best interest of the Government."

In consideration of the Bureau's contention in this matter, a meeting was held with Mr. Marquis, Chief, Lands Division, Department of Justice, which was attended by representatives of your Division, to further discuss the holding in the cited case of Tennessee v. United States. Mr. Marquis examined the briefs in the case, and after a full discussion thereon it was concluded that the case did not support our views quoted above or the views of the Bureau of Reclamation.

Mr. Marquis explained that the courts in settling the obligation of the Government for the payment of just compensation incident to relocation of private utilities measure such awards on the basis of the cost of supplying a new substitute facility which is adequate from the standpoint of function or service. Also, that since it is impractical, if not impossible, in the case of utility relocations to reproduce an existing facility the courts, in compensating owners for the value of that which is taken, take into consideration the element of prolonged useful life of the new facility over that replaced.

The courts, he said, are not concerned with original cost, book cost, or reproduction cost, but in the actual cost of the replacement with a credit to the Government for the prolonged life of the new facility over the facility replaced. That is, if the useful life of an existing facility were 40 percent depreciated, the correct measure of just compensation for relocation would be the replacement cost of the facility, less 40 percent, and regardless of whether the replacement is more or less extensive.

Mr. Marquis indicated that this method of determining just compensation for utility relocations reflects the Department's views thereon, and is supported by the case of State of Tennessee v. United States. We agree with this interpretation of the case, and that the Government's liability for relocating utilities should be determined on the basis of these principles.

We recognize there are inherent complexities involved in negotiating relocation agreements with utilities companies. Also, the desirability on the part of Bureau, in discharging its responsibilities under section 11 of the Reclamation Project Act of 1939, 53 Stat. 1197, 43 U. S. C. 389, to settle such matters by negotiation rather than resorting to the courts. However, we cannot agree that uniform application of a depreciation allowance to the Government in connection with utility relocations operates to limit the flexibility required of Government agents in negotiating such contracts or otherwise adversely affects the interest of the Government.

Evidence of the expired useful life of an existing facility is generally supportable in fact, and in itself requires little, if any, negotiation. This important element should be developed and applied in

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making awards for utility relocations, and, where it is not so applied, the record should at least indicate the reasons therefor and the compensating factors flowing to the Government on account thereof.

In a meeting recently held with Mr. Hill, of your Division, we pointed out the difficulty of furnishing advice, on the basis of the record available here, with reference to the Bureau's comments on the specific examples of relocated facilities set forth in the proposed report to the Congress. It was suggested and agreed to by Mr. Hill that a meeting of our representatives be arranged to go over the matters informally.

The proposed report to the Congress transmitted with your memorandum of June 25, is returned herewith. ✓

J. E. Welch

General Counsel

Attachment